

## **DETAILED ACTION**

### ***Claim Rejections – 35 USC § 112***

The Examiner stated that claims 44-69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant has amended claim 44, 68 and 69. The Applicant kindly requests that the Examiner remove this rejection.

### ***Claim Rejections – 35 USC § 103***

The Examiner stated that claims 1-5, 8-10, 12-24, 28, 30-38, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al (U.S. Patent: 6,567,787) in view of Brockman et al (U.S. Patent: 5,826,240).

The Examiner stated that claims 6-7, 25-27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Stuart et al (U.S. Patent: 6,868,154).

The Examiner stated that claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Rtschev et al (U.S. Patent: 5,634,086).

The Examiner stated that claims 39 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Blair (U.S. Patent: 7,203,285).

The Examiner stated that claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Macleod Beck et al (U.S. Patent: 6,910,072).

The Examiner stated that claims 44-50, 52-54, 56-58, 62, 64, and 67-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al (U.S. Patent: 7,076,427) in view of Katz (WO 94/21084) (referenced in the parent application 09/785,048).

The Examiner stated that claims 51, 63, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of Eilbacher et al (U.S. Patent: 6,724,887).

The Examiner stated that claims 55 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of Macleod Beck (U.S. Patent: 6,910,072).

The Examiner stated that claims 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scarano et al in view of Katz and further in view of McIlwaine et al (U.S. Patent: 6,324,282).

The Applicant would like to address the independent claims as follows. Claims 1 and 23 have been rejected by the Examiner under 35 U.S.C. 103(a) as being unpatentable over Walker et al (U.S. Patent: 6,567,787) in view of Brockman et al (U.S. Patent: 5,826,240). Claim 11 is rejected further in view of Rtischev et al (U.S. Patent: 5,634,086). In general, the following arguments apply to claims 1, 11, 23, 44, 68 and 69.

To rely on a reference under 35 USC 103, it must be analogous prior art. An examiner must determine what is analogous prior art for the purpose of analyzing the obviousness of the subject matter at issue. MPEP § 2141.01(a) In this case, the Examiner has combined references, some which may be analogous and some which are definitely not. In fact, the Examiner, in the Office Action dated June 3, 2008 states many times throughout the Office Action statements like "Scarano, Katz, and Macleod Beck are an analogous art because they are from a similar field of endeavor in customer service analysis systems. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of the invention, to modify the teachings of Scarano in view of Katz with the email means taught by Macleod Beck in order to provide a means for providing an activity review that is only accessible by the intended agent. *Yet analogous art is defined as a similar problem to be solved not a modification of prior art.* MPEP § 2141.01(a) (See case law recited under this section wherein there is one problem to be solved) The courts have ruled that, for example the functional grating shown by one reference and the shoe scrapers shown by another reference were readily apparent. MPEP § 2141.01(a); *In re Ellis*, 476 F 2d 1370, 177 USPQ 526, 527 (CCPA 1973). The

Examiner has pieced together non-analogous prior art to negate pieces of claim elements, while leaving out portions of claim elements. For example, Walker is an audio sensing device that picks up words, in only three states – low, medium and complex. The invention can be used to determine whether an employee can fit into one of those categories. Brockman is a handheld computer that is used by a car sales person to enter data manually. If the data is not entered (it does not have to be entered correctly – just entered), then the sales person cannot proceed to sell the car to the intended buyer.

Scarano is a voice recognition module, but it does not compare one script to another, it is a search engine and uses the voice recognition to pick out words or phrases to find the voice data files and then uses those files to monitor. Katz is a telecommunication system that has monitoring capabilities, such a surveillance monitoring. It could be used to monitor employees. However, Applicant does not believe these prior art references are analogous prior art and, as such, would request that the Examiner review his choice of prior art. ***The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts.*** (Emphasis added). MPEP § 2143.01; In re Young, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991).

With regard to claim 11, the Examiner stated that claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al in view of Brockman et al and further in view of Rtischev et al (U.S. Patent: 5,634,086). ON page 13 of the Office Action, he states that Walker, Brockman and Rtischev are analogous art because they are from a similar field of endeavor in recognizing speech corresponding to a script reading. Thus, it would have been obvious to modify the teachings of Walker (speaking into a POS machine) in view of Brockman (entering data into a handheld computer) with the speech input conversion means taught by Rtischev (a language course). ***Applicant does not see any correlation, thus no suggestion or motivation to make the proposed modification.*** Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary

skill in the art, considering the degree to which one reference might accurately discredit another. In re Young, 927 F.2d 588, 18 USPO 2d 1089 (Fed. Cir. 1991)

The Examiner, in numerous places throughout the Office Action, has made conclusory statements regarding the claims. For example, with respect to claim 1 on page 6, the Examiner states that Walker and Brockman are analogous art because they are from a similar field of endeavor in customer service analysis systems using speech recognition. Brockman does NOT use speech recognition analysis. Brockman uses a handheld computer to enter data in order to move to the next level of service. On the same page, the Examiner states that Brockman uses time stamps that indicate an elapsed period of time of a particular step and that he says means a “panel” as in Applicant’s invention. This must mean that the Examiner did not thoroughly read Applicant’s invention. Because a particular step *does not define a panel as set forth in Applicant’s invention*.

The Office Action is 22 pages long and there are bold and unsupported statements such as the above-mentioned sentence in a good deal of the Office Action. A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). “[R]ejections on obviousness cannot be sustained by *mere conclusory* statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 550 U.S., 82 USPQ2d at 1396 quoting In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is *some teaching, suggestion, or motivation to do so*. (emphasis added) In re Kahn, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching as a guard against using hindsight in an obviousness analysis). As set forth above, these types of statements and the type of art is

throughout the application and this point could be further embellished. However, this issue has been discussed, however the issue of interpreting the claim language, and considering both the invention and the prior art as whole has not.

Throughout the Office Action, the Examiner made statements resembling “[w]ith respect to claim 68, Scarano in view of Katz discloses the agent evaluation method, as applied to Claim 44, wherein Scarano discloses that such a method can be implemented on a computer, which would inherently require some type of memory for program storage. (Office Action 6/3/08, p.19) Katz does not have an agent evaluation method, Katz has a surveillance method. Referring back to the Examiner’s comments on claim 44, he states that “Scarano and Katz are analogous because they are from a similar field of endeavor in customer service monitoring. Thus, every independent claim has a different reason why the prior art references should be combined. The Examiner, instead of interpreting the invention, claim language and the prior art as a whole, is picking apart the claims and trying to match prior art to portions of claim elements.

Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art as whole. MPEP §2142.02. Distilling the invention down to a gist or to a thrust of the invention disregards the “as a whole” requirement. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F 2d 1540, 220 USPO 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984) (restricting consideration of the claims to 10% per second rate of stretching of unsintered PTFE and disregarding other limitations resulted in treating claims as though they read differently than allowed). The Examiner has disregarded the limitation in claim 1 of “*logging a time displacement, based on the time displacement timestamp, per panel as a portion of a log record; logging the voice interaction as a portion of the log record; based on the logging, evaluating the at least one voice interaction via the at least one of the plurality of panels.*” The Examiner has referred to the panels as “a particular step” which disregards the definition in the specification stating “each panel being associated with a particular script or portion of a script.” “In determining whether the invention as a whole would have been obvious

under 35 USC 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification. . . Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, ***it is this invention as a whole, and not some part of it, which must be obvious under 35 USC 103.***" (Emphasis added) In re Antonie, 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1977) (citations omitted) (The claimed wastewater treatment device had a tank volume to contractor area of 0.12 gal./sq. ft. The court found the invention as a whole was the ratio of 0.12 and its inherent property that the claimed devices maximized treatment capacity regardless of other variables in the devices. The prior art did not recognize that treatment capacity was a function of the tank volume to contractor ratio, and therefore the parameter optimized was not recognized in the art to be a result-effective variable.). See also In re Papesch, 315 F.2d 381, 391, 137 USPQ 43, 51 (CCPA 1963) ("From the standpoint of patent law, a compound and all its properties are inseparable."). Throughout the Office Action the Examiner has, in a detailed manner, methodically separated claim elements, given some elements a particular meaning to fit the element or portion of the element to the prior art and has made different claims about the same prior art.

In conclusion, the Examiner has chosen non-analogous prior art, tried to show obviousness by combining or modifying the teachings of the prior art to produce the claimed invention where there is no teaching, suggestion, or motivation to do so and distilled the invention down to a "gist" or "thrust" of the invention disregarding the "as a whole" requirement.

However, purely in the interest of expediting the prosecution of the instant invention, Applicant has amended claims 1, 11, 23, 44, 68 and 69 to include the following limitations:

Claims 1 and 11:

providing a script compliance module accessible via a user interface and a communications network, the communications network including an analog or digital telephone, an internet-based network, a wireless network or any voice communications supporting network;

converting the at least one voice interaction received via the communications network into at least one digital signal comprising at least one spectral representation of the at least one voice interaction,

Support for these limitations can be found at page 7 and is not found in the prior art references. Even if such a limitation were found in a prior art reference, it would not pertain to the present invention as set forth above.

Claim 23:

at least one automatic speech recognition component adapted to analyze, based on the logging component, the at least one voice interaction using each of the plurality of panels employing panel-by-panel playback including the time displacement timestamp and to determine via the confidence level thresholds of the least one automatic speech recognition component whether the at least one agent has adequately followed the at least one script; and

Support for these limitations can be found at page 9 and 11 and is not found in the prior art references. Even if such a limitation were found in a prior art reference, it would not pertain to the present invention as set forth above.

Claims 44, 68 and 69:

obtaining a further voice record of at least a portion of at least a further pre-recorded interaction or a plurality of pre-recorded interactions, wherein the plurality of pre-recorded interactions are stored in a library or data store containing exemplary interactions by the at least one agent made available for future reference, in which the at least one aspect is not deficient; and

transmitting data representing at least the portions of the voice record and the further pre-recorded voice record or plurality of pre-recorded interactions to the at least one agent.

Support for these limitations can be found at least at page 10 and is not found in the prior art references.

For the reasons set forth above, Applicant believes the independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully requests they be passed to allowance.

Respectfully submitted,  
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